MOTION FILED
NOV - 3 2000
(2)

No. 00-527

IN THE
Supreme Court of the United States

WALKER COUNTY SCHOOL DISTRICT,
Petitioner,

v.

JENSINE BENNETT, *et al.*,
Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF NATIONAL SCHOOL BOARDS ASSOCIATION, NATIONAL ASSOCIATION OF STATE DIRECTORS OF SPECIAL EDUCATION, NATIONAL ASSOCIATION OF SCHOOL PSYCHOLOGISTS, AND GEORGIA SCHOOL BOARDS ASSOCIATION

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WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

15pp

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

The National School Boards Association, the National Association of State Directors of Special Education, the National Association of School Psychologists, and the Georgia School Boards Association, respectfully request leave to file the attached brief *amicus curiae* in support of the Petition for Certiorari in this case. Counsel for Petitioner Walker County School District has consented to the filing of this brief. Counsel for Respondent Jensine Bennett has not consented.

The National School Boards Association ("NSBA") is a not-for-profit federation of 49 state school board associations, the Hawaii State Board of Education, and the boards of education of the District of Columbia, Guam, and the U.S.

Virgin Islands. Founded in 1940, NSBA represents the nation's 95,000 school board members, who, in turn, govern 14,772 local school districts that serve more than 46.5 million public school students – approximately 90 percent of the elementary and secondary students in the nation.

The National Association of State Directors of Special Education ("NASDSE") is a not-for-profit professional organization established in 1938 representing the state administrators of education programs for children and youth with disabilities in the 50 states, the District of Columbia, Puerto Rico, the Bureau of Indian Affairs, the Department of Defense Dependent Schools, and other Federal jurisdictions. NASDSE operates for the purpose of providing services to its members to facilitate their efforts to maximize educational outcomes for individuals with disabilities.

The National Association of School Psychologists ("NASP") is a not-for-profit national professional association representing over 21,500 members, most of whom work in educational settings from preschool through higher education. Regular membership is open to anyone who is currently working or credentialed as a school psychologist; trained as a school psychologist and working as a consultant or a supervisor of psychological services; or primarily engaged in the training of school psychologists at a college or university, promoting educationally and psychologically healthy environments for all children and youth by implementing research-based, effective programs that prevent problems, enhance independence, and promote optimal learning. This is accomplished through state-of-the-art research and training, advocacy, ongoing program evaluation, and caring professional service.

The Georgia School Boards Association ("GSBA") serves as an advocate for Georgia's public education system and

works to enhance the ideal governance structure for Georgia's public schools having an elected board of education and an appointed superintendent. As a voluntary, statewide organization, GSBA works collectively for Georgia's 180 boards of education by offering in-service training, technical assistance and a vast array of services and resources to local school systems and school board members. GSBA's membership is comprised of the state's local boards of education. GSBA also has a number of Associate and Attorneys Council members.

These four organizations share a long history of involvement in the implementation of special education laws, including the Individuals with Disabilities Act ("IDEA"), 20 U.S.C. §§ 1400 *et seq.*, in Georgia and throughout the Nation. Their members have a strong interest in resolution of the Circuit conflict that presently exists as to whether federal district courts must – in the plain language of the IDEA – "hear additional evidence at the request of a party." 20 U.S.C. § 1415(i)(2)(B). They also have a strong interest in correcting the Eleventh's Circuit erroneous ruling in this case, which will unfairly prejudice parents and school districts alike by precluding consideration of evidence that may well be critical to the proper implementation of the IDEA.

Respectfully submitted,

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BRIEF AMICUS CURIAE

The National School Boards Association, the National Association of State Directors of Special Education, the National Association of School Psychologists, and the Georgia School Boards Association, respectfully submit this brief *amicus curiae* in support of Petitioner Walker County School District.

INTEREST OF AMICI

The interest of *amicus* is set forth in the accompanying Motion for Leave to File Brief Amicus Curiae.*

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*Pursuant to Supreme Court Rule 37.6, none of the parties authored this brief in whole or in part and no one other than *amici* or undersigned counsel contributed money or services to the preparation or submission of this brief.

STATEMENT

The Individuals with Disabilities Education Act ("IDEA") provides "that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living." 20 U.S.C. § 1400(d)(1)(A). The "free appropriate public education" required by the IDEA is tailored to the needs of each child by means of an "individualized education program" ("IEP"), which is a written statement developed, reviewed and revised by state and local education entities and parents. *Id.* § 1414(d). Parents who are dissatisfied with a school district's IEP are entitled to a due process hearing conducted by the state educational agency. *Id.* § 1415(f)(1).

Any party to such a hearing aggrieved by the findings and decision has the right to bring a civil action – as opposed to an administrative appeal – in state court or federal district court. *Id.* § 1415(i)(2). Under § 1415(i)(2)(B), the district court in such actions "shall receive the records of the administrative proceedings," "shall hear additional evidence at the request of a party," and "basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate."

In this case, the parents of an autistic child challenged the IEP prepared by the Walker County School District in Walker County, Georgia. Following a due process hearing, which did not provide for full discovery and in which the School District was unable to obtain certain school records and testimony, an administrative law judge ruled that the IEP did not provide the child with a free appropriate education, and ordered that the

parents be reimbursed for the cost of the child's private schooling. The School District then filed a civil action under the IDEA.

This case arises out of the district court's interpretation of the IDEA provision that a district court "shall hear additional evidence at the request of a party." *See* 20 U.S.C. § 1415(i)(2)(B)(ii). Despite the mandatory nature of this statutory language, the district court refused to consider additional evidence that the School District sought to introduce in the civil action. The Eleventh Circuit affirmed, interpreting the phrase "shall hear additional evidence at the request of a party" not to mean that the court is required to hear evidence if a party so requests, but to mean instead that the district court may choose, in its discretion, to hear supplemental evidence.

REASONS FOR GRANTING THE PETITION

The petition for certiorari should be granted because there is a pressing need for uniform interpretation and application of § 1415(i)(2) of the IDEA. This case presents a recurring legal question. Parents across the country file numerous challenges to IEPs every year. When these challenges reach the federal district courts in the form of civil actions, courts are virtually always faced with the decision of whether to admit "additional evidence." Yet, courts are divided about how to interpret the meaning of the phrase "shall hear additional evidence at the request of a party." As set forth in the petition for certiorari, the First, Fourth, Seventh and Ninth Circuits, like the Eleventh Circuit in this case, have interpreted "additional" narrowly to mean "supplemental." By contrast, the Third and Sixth Circuits have adopted broader interpretations that are more likely to enable parties to present relevant evidence that they

may not have been able to present in the state administrative hearing.

In the words of the Fourth Circuit, "there appears to be confusion as to the exact nature of the IDEA proceedings before the district courts." *Kirkpatrick v. Lenoir County Bd. of Educ.*, 216 F.3d 380, 385 & n.4 (4th Cir. 2000). For example, a school district filing an IDEA civil action in the Eleventh Circuit may be denied the opportunity to present a particular piece of additional evidence, while a similarly situated school district in a district court in the Sixth Circuit may be allowed to present the very same evidence. So long as this confusion persists, both parents and school districts will receive uneven treatment in essentially identical civil actions, based solely on geography.

This lack of uniformity is at odds with the statutory scheme established by the IDEA. Section 1415(i)(2) of the IDEA is intended to create standard procedures for civil actions challenging state administrative rulings regarding IEPs. While Congress did not intend the IDEA to displace the primacy of States in the field of education, *see Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 207-08 (1982), and allowed for state law to govern the due process hearings conducted by state educational agencies, *see* 20 U.S.C. § 1415(f), it nonetheless established uniform federal procedures to govern disputes between parents and school districts regarding IEPs once a civil action is filed. *See* 20 U.S.C. § 1415(i)(2). These procedures, including the provision that a court "shall hear additional evidence at the request of a party," serve an important purpose: they ensure that the numerous parents and school districts across the country, whose IEP challenges are subject to widely varying state

administrative systems, are afforded an equal and standardized opportunity to adjudicate their claims in a civil action.

Indeed, the question presented by this petition is particularly important precisely because of the variation among state administrative proceedings. For example, as discussed in the petition for certiorari, some States, such as Georgia, do not provide for the discovery of evidence in administrative hearings. Moreover, there is wide variation among States as to who may properly administer a due process hearing. Whereas some states reserve this role for lawyers, other States allow non-lawyer educators or others to serve as hearing officers. *See generally* Joseph R. McKinney & Geoff Schultz, *Hearing Officers, Case Characteristics, and Due Process Hearings*, 111 Educ. L. Rep. 1069 (1996) (discussing disparate outcomes of IDEA due process hearings depending on characteristics of hearing officers). The IDEA protects against these potentially wide variations in state proceedings by providing standard procedures in reviewing those decisions. It offends principles of fairness and the sound administration of justice to allow litigants in some Circuits to introduce new evidence in court in IDEA cases, while denying that right to litigants in other Circuits. If, however, courts continue to disagree about the meaning of the procedures to be followed in IDEA civil actions, the judiciary's role in the IDEA scheme will not be fully realized.

The petition for certiorari should also be granted because the Eleventh Circuit's interpretation of "additional evidence" is fundamentally unfair to parents and school districts alike. In many cases, including this one, a school district or parent may not be able to discover or present the full array of relevant evidence in the state administrative hearing due to state rules. Under the Eleventh Circuit's restrictive view of

§ 1415(i)(2)(B)(ii), such a party might well be denied the chance to present this additional evidence in a civil action in district court, as well. As a result, important and relevant evidence might never be considered by any decisionmaker at any stage of review.

Finally, the Eleventh Circuit's interpretation contravenes the plain language of the provision, which states that a court "shall" hear evidence "at the request of a party." *See* 20 U.S.C. § 1415(i)(2)(B)(ii). As the petition for certiorari argues, the use of the mandatory word, "shall," combined with the statement that the evidence be heard at the party's request, rather than in the court's discretion, strongly suggests that the Eleventh Circuit's reading is too narrow.

For these reasons, this Court should grant the petition for certiorari to resolve the conflict among the Courts of Appeals on this important issue so that IDEA is administered fairly and uniformly across the nation.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

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